



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO.: HA12HT-60883
HUD NO.: 02-09-0946-8

MARY LOU FRISCH,
and
CHINH Q. LE, ESQ., DIRECTOR,
NEW JERSEY DIVISION ON CIVIL RIGHTS,

Complainants,

 γ

MAYS LANDING VILLAGE
CONDOMINIUM ASSOCIATION,

Respondent.

FINDING OF PROBABLE CAUSE

Consistent with a Verified Complaint filed on August 24, 2009, and subsequent Amendment to the Verified Complaint, the above-named respondent has been charged with unlawful discrimination within the meaning of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 *et seq.*), and specifically within the meaning of N.J.S.A. 10:5-4 and 10:5-12(g), because of disability.

Chinh Q. Le (Director) is the Director of the Division on Civil Rights and, in the public interest, has intervened as a Complainant in this matter pursuant to N.J.A.C. 13:4-2.2(e).

SUMMARY OF COMPLAINT

Ms. Frisch (Complainant) claimed that she was discriminated against based upon her disability (Chronic Obstructive Pulmonary Disease) when Respondent refused to grant her a reasonable accommodation for that disability. To support her claim, Complainant alleged that Chronic Obstructive Pulmonary Disease (COPD) is a lung disease which limits her mobility. Complainant further alleged that due to a job loss and subsequent hospitalizations, she fell behind in her monthly maintenance fees. Complainant alleged that because of the arrearage, Respondent restricted her access to the Common Element, which includes the parking lot. Complainant alleged she has had to park off site which has caused her to walk long distances to and from her car. Complainant alleged she requested from Respondent permission to park in the parking lot as a

reasonable accommodation for her disability. Complainant alleged Respondent denied her request for reasonable accommodation, and even had her car towed from the lot.

SUMMARY OF RESPONSE

Respondent denied discriminating against Complainant for any unlawful reason including disability. Respondent denied Complainant's claim that it refused her reasonable accommodation for her disability and asserted Complainant did not provide any documentation to show she has a disability. Respondent asserted Complainant was legitimately denied the right to utilize the common areas of Respondent's property for parking as a result of her failure to make timely payment of maintenance fees.

BACKGROUND

Respondent governs a condominium complex consisting of 220 units located in Mays Landing, Atlantic County, New Jersey.

Complainant is a unit owner and has resided at Mays Landing Village for approximately 23 years.

Chinh Q. Le is the Director of the Division on Civil Rights and, in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e).

SUMMARY OF INVESTIGATION

This investigation revealed sufficient evidence to support a reasonable suspicion that Complainant was subjected to unlawful discrimination when Respondent refused to reasonably accommodate her disability. The investigation disclosed that Complainant had been diagnosed with COPD and was issued a Permanent Disabled Parking Permit from the New Jersey Motor Vehicle Commission in 1999. Since that time, Complainant has parked her car in Respondent's parking lot in a space reserved for persons with disabilities, which is approximately 10 feet from the entrance to her unit.

There was no dispute that in or around January 2007 Complainant fell behind in the payment of her monthly maintenance fees of \$196.19 per month. At the time the instant complaint was filed, Complainant had an outstanding balance of \$4,590.82, which included both late fees and legal fees. Based upon the financial records Respondent provided, it appears Complainant's outstanding principal at the time the instant complaint was filed was \$774.00. The balance of the amount was composed of fees, penalties and interest.

During the investigation, Respondent submitted a copy of sections 4 and 5 of the By-Laws governing the Mays Landing Village Condominium Association. Section 4 is labeled "Rights of Membership" and grants members of Respondent Association the privileged use and enjoyment of the Common Elements. Section 4(b) grants Respondent the power to "[s]uspend the use and enjoyment of the Common Elements as provided in Section 5." Section 5 grants Respondent the power to suspend the membership and voting rights for any member with an unpaid assessment against the unit.

The investigation disclosed that Respondent exercised its right to suspend Complainant's use of the Common Elements in November 2008. There was no dispute the parking lot is part of the Common Elements along with amenities such as the pool and tennis courts. As such, Complainant was no longer permitted to park her car in the parking lot. During an interview with the Investigator, Complainant stated that having to park off site caused her great physical distress and exacerbated her medical condition. Complainant stated she had to park her car approximately eight tenths of a mile from her unit. Complainant told the Investigator it took her 40 minutes to walk that distance because she had to stop and rest along the way.

In a letter addressed to Respondent dated November 17, 2008, Complainant asked specifically that she be permitted to park in the parking lot as a reasonable accommodation for her disability. Respondent denied the request and informed her that her membership was suspended, and when her account was current her parking privileges would be restored.

The investigation did not substantiate Respondent's assertion that Complainant never made it aware that she was a person with a disability. Respondent stated Complainant did not provide it with any documentation to show she had a disability. The Investigator asked Respondent if a request had ever been made that she provide any information concerning her disability. In response, Respondent admitted receiving e-mails and letters where Complainant stated her disability was COPD, but provided no evidence to show it ever requested confirmation that she was a person with this disability. Moreover, Complainant was issued a Permanent Disabled Parking Permit from the New Jersey Motor Vehicle Commission in 1999, and has parked her car in Respondent's parking lot in a space reserved for persons with disabilities since that time.

During the investigation, Respondent failed to demonstrate that allowing Complainant to utilize the parking lot would cause it undue hardship, or that the requested accommodation was not reasonable. Respondent had already suspended Complainant's membership and voting rights, and suspended her access, and that of her guests, to the pool, tennis courts and other amenities. The By-Laws also afford Respondent the right to place a lien on Complainant's property and refer her account to a collections agency.

Complainant was not permitted to park on Respondent's property until November 12, 2009, when, at the Division's request, Respondent agreed to allow her to do so for the duration of the investigation or December 31, 2009, whichever came first.

ANALYSIS

At the conclusion of the investigation, the Division is required to make a determination whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. Frank v. Ivy Club, 228 N.J. Super. 40,56 (App. Div.1988), rev'd on other grounds, 120 N.J. 73 (1990), cert.den., 111 S.Ct. 799. A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218,226 (App.Div.1978). See also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

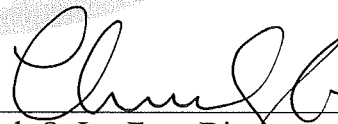
In the instant case, the investigation disclosed that Complainant made a request for a reasonable accommodation because her disability impaired her mobility. Respondent denied her request because Complainant owed Respondent a sum of money. The investigation disclosed no evidence to suggest Respondent considered Complainant's disability when making the decision to deny her accommodation request. Respondent did not demonstrate that granting Complainant's request imposed an undue hardship on its operation.

FINDING OF PROBABLE CAUSE

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint.

01/04/10

Date



Chinh Q. Le, Esq., Director
New Jersey Division on Civil Rights

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DOCKET NUMBER: **HA12HT-60883**

MARY LOU FRISCH,

Complainant,

-vs-

**MAYS LANDING VILLAGE
CONDOMINIUM ASSOCIATION)**

Respondent,

RECEIVED AND RECORDED

DATE *1-4-00*

DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS

BY *Wade Lucas*

AMENDMENT TO VERIFIED COMPLAINT

I, **Chinh Q. Le, Esq.**, as the Director of the New Jersey Division on Civil Rights, hereby intervene as a complainant in the above referenced matter pursuant to N.J.A.C. 13:4-4.2(b) and hereby amend the caption of the Verified Complaint, received and filed on August 24, 2009, to read as follows:

Mary Lou Frisch,

And Director

Chinh Q. Le, Esq.

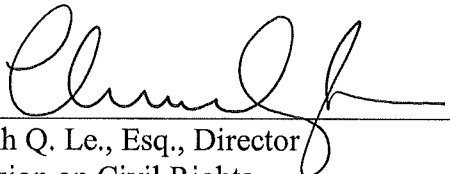
Complainants,

vs.

Mays Landing Village

Condominium Association

Respondent,


Chinh Q. Le., Esq., Director
Division on Civil Rights

STATE OF NEW JERSEY)

) SS:
COUNTY OF *Essex*)

Sworn to and subscribed before me

this *4th* day of *January, 2010*


NOTARY PUBLIC OF NEW JERSEY

AIDA G. RAWLINS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 13, 2014